UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP MORRIS USA, INC., f/k/a PHILIP MORRIS INC., et al., Defendants.	Civil No. 99-CV-02496 (GK) REDACTED FOR PUBLIC FILING

DEFENDANTS' WRITTEN DIRECT EXAMINATION OF
VICTOR LINDSLEY

SUBMITTED PURSUANT TO ORDER #471

[Part 3 of 3]

http://legacy.library.ucsf.edu/tid/xqd07a00/pdf Guttenberg http://www.industrydocuments.ucsf.edu/docs/lmhl0001

Q: Let's talk about the individual exhibits, and I will ask you why they don't. The most recent was U.S. Ex. 20,065. Would you describe it?

A: Yes. This is a November 1981 memo by Laurie Moroz containing a table showing the number of smokers by age group, including 13-17 year-olds.

Q: Who was Laurie Moroz?

A: She was in our market research department.

Q: Were you with Lorillard when this document was written?

A: I had just started in September of that year.

Q: Did you ever see this document in connection with your work in brand marketing?

A: No. My only experience with this document is being shown it in litigation.

Q: Based on your experience at Lorillard, would the information about 13-17 year-olds in this memo have helped the company target them if it had wanted to?

A: No. The document merely contained the *number* of 13-17 year-old smokers. It lacked the key information necessary to market to any group, such as the brands they are smoking, their smoking behavior, and key lifestyle information.

Q: Does the memo indicate that Lorillard researched 13-17 year-olds?

A: No, it doesn't. The information about this age group apparently came from government studies, not research by Lorillard.

Q: Does the document indicate why the information was obtained?

A: No.

Q: Do you know why it was obtained?

A: No.

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Q: The only other research document that Dr. Biglan cited that overlapped with your tenure at Lorillard is a 1981 document, U.S. Ex. 55,927. Would you describe it?

A: It is a focus group report by an outside consultant. There were only 32 interviewees, and they were all 18 or older.

Q: Did you ever see this document in connection with your work in brand marketing?

A: No.

Q: Based on your experience at Lorillard, is research like what was reported in this document projectable to the general population?

A: No, it isn't. That is what distinguishes a focus group, which we call "qualitative research," from a survey, which we call "quantitative research." Such a small sample is not "projectable" to the general population.

Q: If focus group research is not "projectable" to the general population, why does Lorillard conduct it?

A: We use it to give directional insight to a concept or creative application. For example, based on what we learn, we might give further direction to our creative people. If we feel comfortable with the results of the research, we may go on to do a projectable, quantitative study.

Q: Were there references in this document to adolescent smoking practices?

A: On pages 6995-6996, there were discussions about when these 32 people started to smoke and why they chose their first brands (generally the brand of a relative or peers).

Q: Was there any information in this document that would have enabled Lorillard to develop a marketing program aimed at adolescents even if you had wanted to?

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A: No. As I just said, you need product information, information on smoking behavior and key lifestyle information to develop a marketing program aimed at a particular group. That is the kind of information we obtain on adult smokers, but not on adolescents.

Q: To your knowledge, did Lorillard follow this research up with a quantitative study?

A: No.

Q: The third Lorillard document that Dr. Biglan cited to support his opinion about monitoring of teenage smoking is U.S. Ex. 22,357. Would you describe it please?

A: That is a memo from August 1978 in which a local sales manager named Achey wrote to Curtis Judge, company president, that "the base of our business is the high school student."

Q: Who was Mr. Achey?

A: He was a local sales manager in New Jersey.

Q: Based on your experience at Lorillard, do local sales managers have any part in making marketing decisions?

A: No. Marketing recommendations are made by brand marketing personnel. Marketing decisions are made by senior management

Q: Is there anything in this memo that indicates that Lorillard was actively conducting research among people under 18?

A: No, there isn't. Mr. Achey was simply reporting on the market conditions that he observed.

Q: What was the legal smoking age in New Jersey at the time?

A: It was 16.

Q: Does this memo provide any monitoring or analysis of when teenagers start smoking Newport?

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A: No.

Q: Did Lorillard use the information that Mr. Achey provided in the marketing of Newport?

A: Not to my knowledge.

Q: Referring you to U.S. Ex. 89,089, is this Mr. Judge's response to Mr. Achey?

A: Yes, it is.

Q: What did Mr. Judge say in response?

A: Mr. Judge noted that, according to Lorillard's research, "the movement to Newport comes after the entry period" because of dissatisfaction with other brands. (Emphasis in original.) He also rejected Mr. Achey's recommendation to introduce a non-menthol version of Newport, which was the primary reason for Mr. Achey's memo.

Q: Now let me turn to Dr. Slovic. He cited a different research document. He stated (64:17-21):

> Furthermore, U.S. Exhibit 67536, a December, 1978 report prepared for Lorillard by Unisearch, entitled "A Qualitative Investigation of Old Gold Filters," in discussing brand selection of 10-14 year olds and 14-17 year olds, comments that "Smoking doesn't seem to need all that great a rationale: youth immortal. Contrast with previous - older groups." (U.S. Exhibit 67536 at Bates 85073125).

Before I ask if this document reflects the researching of adolescents, let me ask if you have ever seen it before?

A: I don't recall having seen it before preparing for my trial testimony in this case.

Q: Referring you to JD-025155 is this a more legible copy of the document?

A: Yes.

Q: Based on your experience at Lorillard, does this document reflect the researching of adolescents?

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A: No.

Q: Why not?

A: It was another report of a focus group and, as such, it wasn't projectable to the population at large. The portion of the document that Dr. Slovic quoted was crossed out and a handwritten note next to it indicates that this information likely came from adults talking about their past experiences.

Q: What does that handwritten note say?

A: "Not clear that we were talking to young adults remembering."

Q: Is the information about adolescents in this document consistent with your experience at Lorillard?

A: No. In my experience since 1981, the company has not obtained information like this.

Q: Would this information have enabled Lorillard to develop a marketing plan directed to adolescents if it had wanted to.

A: No.

Q: Why not?

A: For several reasons. It is a focus group study and has the limitations of a focus group study. It is only one piece of information and contains no trending information that would allow a marketer to make decisions about how to target a particular demographic group.

Q: In your experience at Lorillard, did the company ever use this information or any other information on underage individuals in the marketing of Old Gold Filters.

A: No.

Q: What is the basis for your answer?

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A: First, Lorillard never marketed to adolescents. But more specifically, so far as I am aware the target demographic for Old Gold Filters has been 25+.

Q: Referring you to JD-025156 can you identify that?

A: Yes. That is the Old Gold Filters Brand Plan dated October 1979, a year after the Unisearch focus group report that you just showed me.

Q: Referring you to pages 3832 and 3839, what does this document indicate about the target age range for Old Gold Filters?

A: It was 25-49.

Q: Let me ask you about other research the government has cited. The government introduced your 1993 document, "NEWPORT America's #1 Menthol," U.S. Ex. 22,350, in which you said that Lorillard was "armed with consumer research" when it overhauled Newport in the early 1970s. The government has suggested that the research to which you referred was a 1969 study presented to Lorillard by Eastman Chemical Co. in 1972 that included 12-24 year-olds. (U.S. Ex. 85,200, U.S. Ex. 85,201.)

Did your 1993 document refer to that study?

A: No. I was not referring to the Eastman study. I had not seen it at that time.

Q: When did you first see it?

A: I saw it when I was preparing for testimony.

Q: Have you ever used the Eastman study in connection with marketing Newport or any other brand?

A: No, I haven't.

Q: Let's discuss your 1993 document which the government cited, U.S. Ex. 22,350; what is it?

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A: It is the text of an article I wrote for Lorillard's internal magazine *The Informer* to report that Newport had become the top-selling menthol cigarette in America. I stated that at the time of the 1972 changeover, "armed with consumer research, a great tasting menthol product, an innovative marketing plan, and a dedicated and resourceful Sales Force, NEWPORT began its remarkable run for the top."

Q: What research were you referring to in your article?

A: The research to which I was referring was conducted with consumers regarding the various aspects of Newport that were being overhauled, including the tobacco blend, the color of the filter paper (cork or white), the package and the advertising campaign.

Q: Does the Eastman report contain any information regarding those elements?

A: No. It doesn't mention Newport or any of those elements, namely the reformulated product, the new blend, the redesigned package, the cork tip or the advertising copy.

Q: Do you recognize Eastman Chemical as a company that offers market research services?

A: No.

Q: Has Lorillard ever contracted with Eastman Chemical to conduct market research?

A: Not to my knowledge.

Q: Does the report contain an indication of the reason it was done?

A: The report indicates that its purpose was to project future consumption. The Introduction to Volume 1 of the Report indicates that "an evaluation of the future pattern of cigarette sales" was the reason for the study. (0437.) Similarly, the section dealing with smoking initiation states, "An analysis of future smoking patterns requires a review of the tendency of people to start to smoke." (0454.)

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2. Lorillard's Research of Adult Smokers

Q: Now let me turn to Lorillard's research of adult smokers. Why does Lorillard conduct research on adult smokers?

A: Research about adult smokers is vital to us because you can't market a product unless you know your consumers. As I have said, you need to know what an adult smoker smokes, their product likes and dislikes, information about their smoking behavior, and relevant lifestyle information.

Q: Let me ask about research on how adult consumers like your products. Is that important to Lorillard?

A: Yes. It has been critical to our success for as long as I have been here to make sure that Newport continues to be the best-tasting menthol cigarette.

Q: How is that research performed?

A: We perform it through taste panels and in-home product testing to monitor whether Newport continues to be preferred over competitive menthol brands. We are continually running taste panels. They consist of a representative sample of adult smokers, who evaluate our brands and competitive brands over time. In-home testing is conducted among a more select group of adult smokers, such as Newport smokers in a test to insure that Newport's taste continues to be preferred to that of Kool.

Q: Why do you conduct research on your products?

A: Because it is critical to know how smokers rate the taste of our products.

Q: What is the age range of people you research?

A: It is 21+ for all research.

Q: For how long has it been 21+?

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A: Since 1999.

Q: Before that, what was the age range of people you researched?

A: 18+.

Q: Has any of your research been conducted on individuals under the age of 18?

A: Not since I have been with Lorillard and not to my knowledge before that.

VI. IMPORTANCE OF SWITCHERS AND MULTIPLE BRAND USERS

Q: Now I would like to turn to the subject of brand switching. Dr. Krugman testified that the amount of brand switching among smokers was only 4-9% a year and that "this small percentage of the market does not and cannot justify the level of expenditures on marketing defendants spend every year." (Tr. tr. 14273:4-6; 12-14.) Is he correct?

A: No.

Q: Why not?

A: In our attempt to build our brand, we pay attention not just to switchers, but to our franchise smokers to make sure they don't become switchers. That consideration has become especially important as Newport has grown. We also recognize the importance of smokers who smoke more than one brand.

Q: How much is one share point in the cigarette industry worth?

A: It is worth hundreds of millions of dollars.

Q: Does that make your marketing worthwhile?

A: Of course it does, both to sustain share, as well as to grow share.

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A. Switchers and Would-Be Switchers

Q: How do you study switching?

A: We used to do it with formal switching studies. Today we study switching by watching sales performance trends between smoker segments in the industry, as well as through custom research studies.

Q: Why do you study switching?

A: We study switching to understand the dynamics in our industry and to identify growth opportunities for our brands.

Q: Referring you to JDEM-020166, what is that?

A: That is a list of 13 formal Lorillard switching studies since I started with the company in 1981.

Q: What information did you get from the switching studies?

A: The studies told us who smoked what brands and who switched. That let us know which competitive brands and which competitive adult smokers were vulnerable. It also told us the competitive brands from which we got our new business and what brands our smokers were switching to.

Q: Referring you to JD-021824, what is that?

A: It is a report of a switching study in 1981 that told us that the largest sources of business for Newport were smokers of Kool, Salem and Marlboro, in that order.

Q: What did you do with the information you got from the switching studies?

A: We analyzed it very carefully and used that information to help develop marketing strategies. For example, knowing the competitive brands most vulnerable to Newport, cross-

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referenced with sales performance trends, allowed us to develop Newport's geographic segmentation.

Q: Referring you to JDEM-020167, what is that?

A: That is a list of reports generated by the 1986 switching study. It shows that our staff prepared 41 separate reports from that study.

Q: For how long did Lorillard conduct individual switching studies?

A: Until the early 1990s.

Q: Why were they stopped?

A: My understanding is that Lorillard stopped conducting switching studies because to provide meaningful results requires a panel of smokers that mimics the marketplace, with a statistically sufficient number of smokers for each brand; that became very hard to obtain as the number of brands increased and the sales volume for many brands declined.

Q: Did you continue to monitor switching after you stopped the formal switching studies?

A: Yes. We used other data to monitor switching.

Q: Do you still monitor switching?

A: Yes, we do. As I said earlier, we monitor sales trends of different adult smoker segments. We also monitor switching trends in our direct marketing program, and we conducted a "market composition" study in 2002 that looked at switching.

Q: Is JD-022391 a report of that study?

A: Yes, it is.

Q: What does it show about switching?

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A: On page 2166, it shows that we asked the respondents whether they switched brands more often now than in the past. Less than half said that they couldn't answer that question because they "[d]o not switch brands." This means that about half of smokers *do* switch brands.

Q: Has switching changed in recent years?

A: Yes. I believe that it has increased as a result of high retail prices. Switching today is a different phenomenon than it was in 1990. In the early 1990s, it was based more on product-taste performance. Now it is more price-driven.

Q: Is switching still important to Lorillard?

A: It is, but in a different way. Our main concern, as Newport has grown, has become keeping our own smokers rather than attracting competitive smokers.

Q: How do you use switching information today?

A: I can actually use it in a more targeted way than I could in the days of the switching studies. With our direct marketing program, I can use the switching information to develop executional programs that directly target individual smokers.

B. Smokers of Multiple Brands

Q: Do many people smoke more than one brand?

A: Yes. Our research has given us information on what we term smokers' "brand sets."

Q: Has Lorillard researched multiple brand use over the years?

A: Yes.

Q: Why?

A: Because if Newport is part of a smoker's "brand set," we will benefit if that smoker smokes more Newport than his or her other brands.

Q: Referring you to JDEM-020188, what is that?

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A: It is a list of 24 Lorillard studies since I have been at Lorillard that included information about smokers of multiple brands.

Q: Do you currently research smokers of multiple brands?

A: Yes. We do so through our direct marketing program and in our research on other promotions.

Q: How, if at all, has the practice of smoking more than one brand changed over the years?

A: It has increased.

Q: How do you know that?

A: We know it through our direct marketing program in which we ask people to identify the brands that they smoke.

Q: Referring you again to JD-022391, the report of your 2002 Market Composition study, what did you find out about the use of multiple brands in that study?

A: That study found that 56% of adult smokers could name a second-choice brand, which is a brand they would choose if their usual brand was unavailable. (2190.) In addition, 23% identified an occasional brand, meaning a brand they smoked occasionally in addition to their first and second choices. (2196.)

VII. OTHER DOCUMENTS INTRODUCED BY THE GOVERNMENT

Q: Mr. Lindsley, I would like to ask you about other documents that the government has introduced in this case. The first one is U.S. Ex. 31,998. The government has alleged that this document shows that at a 1978 Lorillard field sales representatives seminar, there were ideas discussed like "sponsoring youth sports teams; advertising featuring black athletes; tie-ins with pro sports teams; sports posters and bumper stickers; give-away sweat

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bands; tie-ins with record companies; scholarships for underprivileged youth; 'Tie-in with any company who help black . . . Target group age 16+;' and sponsoring Miss Black Teenager contests." (U.S. Proposed Findings of Fact, Paragraph 3753.)

Have you ever seen this document before?

A: Only in preparation for this testimony.

Q: From your review of this document, can you tell who attended the "field sales representatives seminar" the government mentioned?

A: No. Also, it is not clear to me that this was a field sales representatives seminar.

Q: Referring you to the list of ideas on the last two pages of this document, can you tell who generated those ideas or where they came from?

A: No, I cannot.

Q: Let me ask you about the ideas to which the government refers. Did Lorillard ever sponsor youth sports teams, advertise featuring black athletes, have a tie-in with pro sports teams, or adopt any of the other ideas that the government mentions?

A: Not to my knowledge.

Q: The government also introduced U.S. Ex. 56,890, and alleges that this 1982 document contains a proposal that "Video Game Imagery [be] incorporated in pack design (youth appeal). E.g., the widespread video game craze has certain fundamental features which we could be the first to exploit. Names such as PAC, SPACE INVADERS, TRON and their imagery can imaginatively show up on cigarette packs with repeat motifs . . . and patterns, and their bright imagery can have lasting appeal. Can extend concept to SPACE IMAGERY, (Galaxy Cosmos, Universe) (Perini and Bell)." (U.S. Findings of Fact, Paragraph 3761.)

http://legacy.library.ucsf.edu/tid/xqf07a00/pdf http://www.industrydocuments.ucsf.edu/docs/lmhl0001

Have you ever seen this document before?

A: Not until I prepared for this testimony.

Q: Would you describe this document, U.S. Ex. 56,890?

A: It is a report of an idea session of the Tobacco Science Group. There were ideas related to cigarette design, along with a few marketing ideas, such as the ones you just asked me about.

Q: What is the Tobacco Science Group at Lorillard?

A: I don't really know. I am not familiar with it in connection with brand marketing.

Q: Did Lorillard ever apply any of these marketing ideas, such as using the names of video games on cigarette packs?

A: No.

Q: Whose decision is it at Lorillard to make changes in cigarette pack designs.

A: Ultimately, senior management, but the changes would be developed by the Brand Marketing Department.

Q: To your knowledge, did Lorillard's Brand Marketing Department ever consider an idea to incorporate video game imagery into pack design?

A: No.

Q: Finally, I would like to ask you about some documents related to the Harley-Davidson brand. The government has introduced documents regarding this brand and alleges that Lorillard introduced the brand even though Harley-Davidson Inc. complained in 1993 that it had appeal to youth.

Were you involved with this brand?

A: Yes. I was its Brand Manager and Senior Brand Manager from 1987-90.

Q: Would you briefly describe the background of this brand?

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A: In the mid-1980's, we licensed the name Harley-Davidson for a new cigarette aimed at blue collar adult smokers. As with our other brands, we researched the brand only with adult smokers.

Q: Did Harley-Davidson Inc. ever raise a concern about possible youth appeal?

A: Yes, but not until August 1993.

Q: Referring you to U.S. Ex. 54,404, would you identify that?

A: It is a letter from Timothy Hoelter, general counsel of Harley-Davidson Inc., to Ronald Goldbrenner, Lorillard's Associate General Counsel, dated August 17, 1993. He raised two concerns about Lorillard's proposed advertising campaign. One was its possible youth appeal. The other was the concern about the effect on the Harley-Davidson image of marketing the cigarette as a discount brand.

Q: What did he say about Lorillard's positioning of the cigarette as a discount brand?

A: He expressed "concern about positioning Harley-Davidson cigarettes in a way that says, in effect, 'buy Harley-Davidson cigarettes because they're cheap.'" He complained that that "could redefine the Harley-Davidson image in a way that conflicts with the brand image we have worked so hard to create and sustain."

Q: Did Harley-Davidson Inc. ever tell Lorillard about market research that would suggest that the proposed Harley-Davidson campaign might have youth appeal?

A: Yes.

Q: Referring you to U.S. Ex. 21,760, what is that?

A: That is a letter from Mr. Hoelter to Mr. Goldbrenner dated August 27, 1993.

Q: What did he say about that market research?

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A: He said that Harley-Davidson, Inc. had "engaged a market research firm specializing in child research to advise us about whether Lorillard's proposed promotional campaign will appeal to underaged children." He went on to say, "Their work so far suggests the campaign will appeal to underaged children."

Q: Did Lorillard ask Harley-Davidson Inc. to provide it with that market research?

A: Yes, we did.

Q: Referring you to U.S. Ex. 57,194, would you identify that, please?

A: That is a letter from Mr. Goldbrenner to Mr. Hoelter dated August 30, 1993, in which he requested that Harley-Davidson Inc. forward a copy of the test results and methodology.

Q: Did it do so?

A: No, not to my knowledge.

Q: Did Lorillard intend its campaign for Harley-Davidson cigarettes to appeal to children?

A: No.

Q: Did Lorillard change its plan to market Harley-Davidson as a discount brand?

A: Yes. We ultimately marketed it as a full-price brand.

Q: What happened to the Harley-Davidson cigarette brand?

A: It failed and was withdrawn in 1996.

Q: Did Lorillard ever receive the market research that Harley said showed the brand had appeal to youth?

A: No, not to my knowledge.

Q: Have you ever seen that research?

A: No, I haven't.

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VIII. THE AMOUNT OF NEWPORT SPENDING ON MARKETING

Q: Several of the plaintiffs' experts claim that Newport is one of the *most* heavily advertised and promoted cigarette brands and connect that alleged fact to Newport's popularity with adolescents. Dr. Krugman said that Marlboro, Newport and Camel were the three leaders in advertising and promotion according to a study in the early 1990s, and he claimed that it was even more true now. (Tr. tr. 8434:23-8435:6.) Dr. Eriksen testified that Newport was one of the three most advertised brands in 1993. (Tr. tr. 11437:8-15, Tr. tr. 11515:7-18.) Dr. Chaloupka called Newport "one of the most heavily promoted brands." (Tr. tr. 8241:22-9242:6.)

Are these allegations true as to Newport?

A: No.

A. Advertising Expenditures

Q: Would you explain that, and please start with advertising.

A: As price competition has become more important, the amount of our advertising has declined. According to our annual FTC reports, Newport's advertising expenditures, including magazines, newspapers, outdoor, transit and point-of-sale, went from $86.0 million in 1990 to $26.4 million in 2002. At the same time, Newport's market share steadily increased.

Q: Is the amount that Newport spends on different categories of marketing, such as advertising, reported annually to the FTC?

A: Yes.

Q: Please look at JDEM-020186, the graph that is set forth on the next page. It shows the amount of Newport's advertising and its market share from 1988 to 2002. The amount of advertising is taken from Lorillard's FTC reports and includes magazines, newspapers, outdoor, transit and point-of-sale. Newport's market share is taken from the chart you

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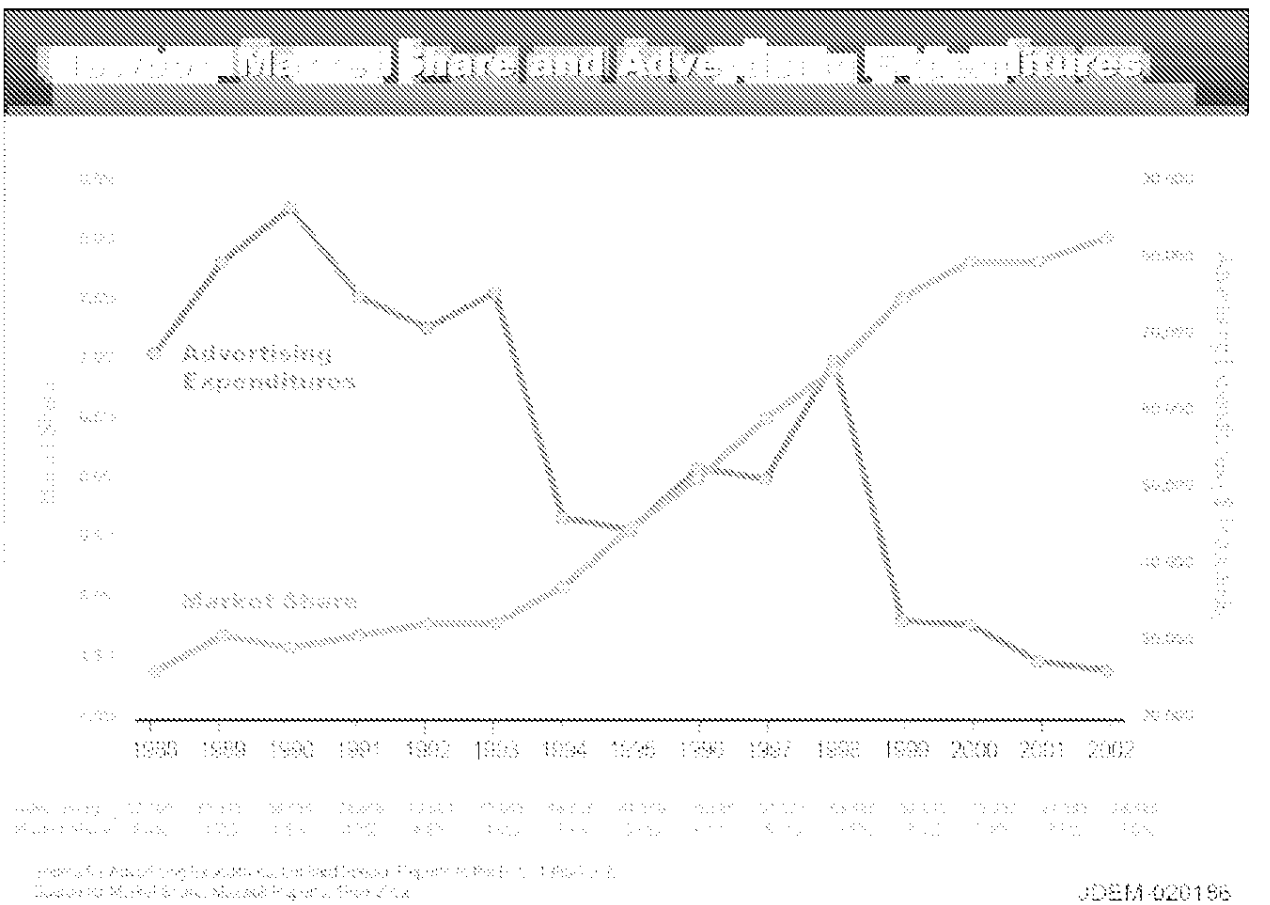
presented earlier. Can you tell us what this indicates about the relationship between the amount of your advertising and your market share?

A: Yes. It shows the rise in Newport's market share and the fall in its advertising expenditures since the late 1980s.



JDEM-020196

Q: What was the effect of the MSA on the amount Lorillard spent on Newport advertising?

A: Outdoor and transit advertising were prohibited by the MSA at the end of 1998. At that time we limited our ads to magazines and point-of-sale. You can see that our advertising expenditures fell sharply after 1998.

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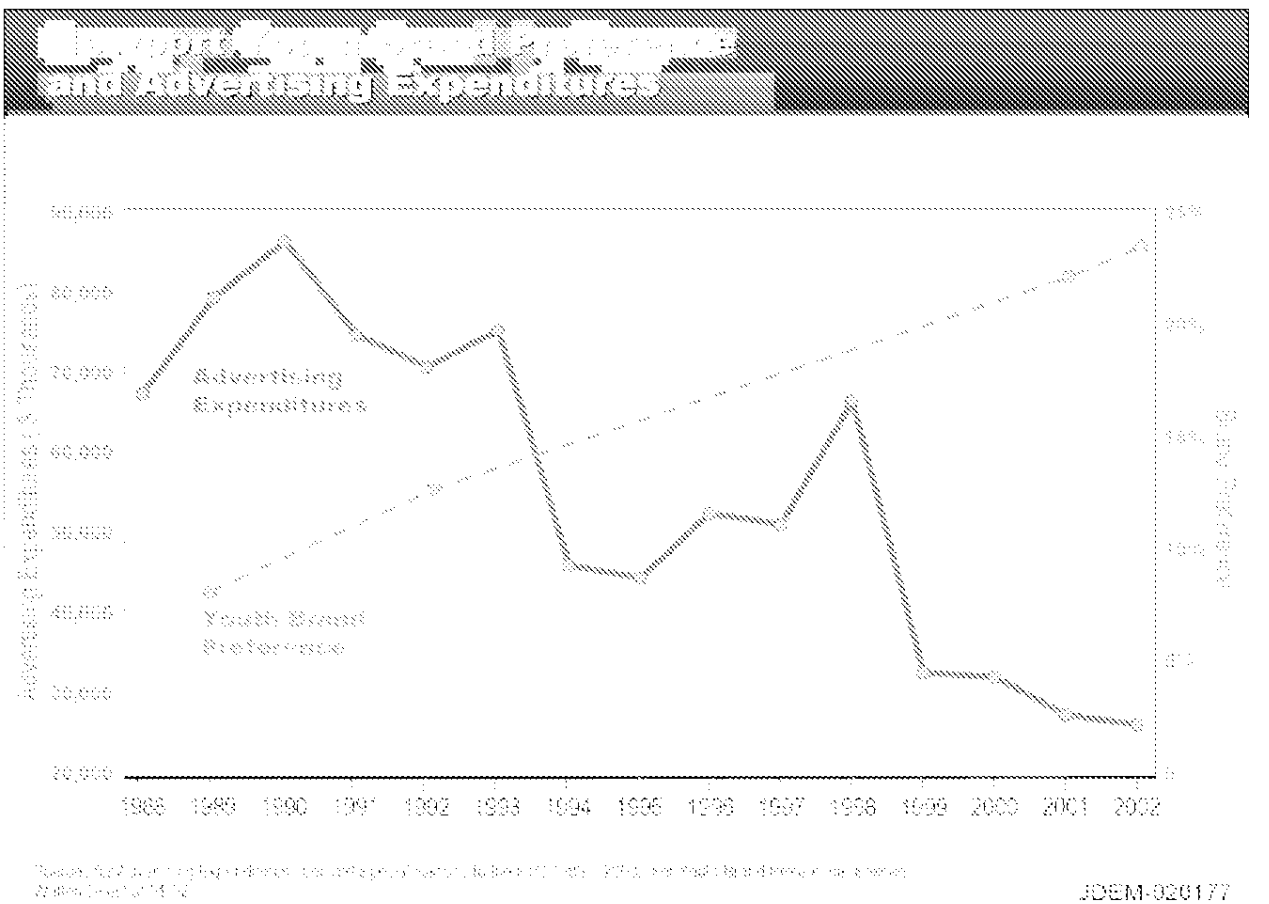
Q: Please look at the following graph, JDEM-020177. This time the amount of advertising is plotted against youth brand preference for Newport, according to Dr. Eriksen's testimony. What does this show about their relationship?

A: Again, they are going in opposite directions. The preference of adolescents for Newport is shown to be increasing, while the amount of money we spent on advertising was decreasing.



JDEM-020177

Q: As I mentioned, Dr. Eriksen testified that Newport was one of the three most heavily advertised brands. The government produced a trial exhibit that compiled the magazine advertising spending of all cigarette brands from 1993 to 2002. (U.S. Ex. 73,965.) Newport's ranking is shown in the following table, JDEM-020179.

http://legacy.library.ucsf.edu/tid/xqc07a00/pdf
Electronic copy available at http://www.industrydocuments.ucsf.edu/docs/lmhl0001

Newport's Ranking in Magazine Advertising Spending

Year	Rank
1993	5
1994	13
1995	13
1996	12
1997	11
1998	11
1999	14
2000	9
2001	8
2002	7
2003 (first five months)	8

Source: [illegible] JDEM-020179

What does this indicate in terms of how heavily advertised Newport was?

A: During those years, Newport was never in the Top 3 in magazine spending. Until 1999, that doesn't reflect all advertising, since the industry also advertised on billboards. After that point, however, media spending was limited to magazines. (There is very little cigarette advertising in newspapers.)

Q: How did Newport rank in magazine ad spending after the MSA went into effect?

A: Based on these figures, Newport's ranking was as high as 7th and as low as 14th.

Q: Mr. Lindsley, what does the term "share of voice" mean in your work?

A: It is one brand's percentage of all advertising expenditures in the industry.

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Q: Dr. Krugman compiled total industry spending on magazine advertising from 1993-2002 from the companies' FTC reports. (Krugman written direct, 122.) Please look at the table set forth below, JDEM-020180. That shows for those years total industry spending on magazine advertising according to Dr. Krugman, Newport's magazine advertising spending according to Lorillard's FTC Reports, Newport's percentage of industry magazine spending, and Newport's market share according to the Maxwell Reports.

[illegible] Advertising Share of Voice and Market Share

Year	Total	Newport	Newport Share of Voice	Newport Market Share
1993	$235,000,000	$14,860,000	6.32%	4.80%
1994	$252,000,000	$6,877,000	2.73%	5.10%
1995	$249,000,000	$7,339,000	2.95%	5.60%
1996	$243,000,000	$5,829,000	2.40%	6.00%
1997	$237,000,000	$5,410,000	2.28%	6.50%
1998	$280,000,000	$6,639,000	2.36%	6.90%
1999	$377,000,000	$7,665,000	2.03%	7.50%
2000	$295,000,000	$12,017,000	4.07%	7.80%
2001	$173,000,000	$12,863,000	7.44%	7.60%
2002	$107,000,000	$14,210,000	13.28%	8.00%
Average	$260,222,222	$8,833,222	4.59%	6.50%

Source: [illegible] Krugman Written Direct at 122; Division Lorillard Spend Reports to the FTC 1993-2002; Newport Share Points: Newport as percentage of Total Market Share: Maxwell Reports 1993-2002

JDEM-020180

What does this table indicate?

A: It indicates that after 1993, Newport's magazine advertising share of voice was consistently less than its market share until 2002. What happened then is that Philip Morris dramatically reduced its advertising in magazines, so Newport's share of voice went up. But,

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from 1994 through 1999, while Newport's market share was rising from 5.1% to 7.5%, nearly a 50% increase, it never accounted for as much as 3% of total industry expenditures,. Overall, it averaged a market share of 6.6% but a share of voice of only 4.6%, even with the recent decline of Philip Morris' advertising.

B. Total Marketing Expenditures

Q: Let's talk now about overall marketing expenditures. First, does advertising make up only a small portion of the marketing expenditures you report to the FTC?

A: Yes.

Q: Dr. Langenfeld testified that "The vast majority of the cigarette advertising and promotion expenditures published by the FTC are actually just price cuts." (Langenfeld written direct, 84:14-16.)

Is that true for what Lorillard reports?

A: Yes. As I mentioned before, the main thrust of our marketing today is discounting.

Q: Dr. Krugman compiled the total industry marketing expenditures as filed with the FTC from the 1960s through 2002. (Krugman written direct at 27-28.) Referring you to JDEM-020181, which is copied on the next page, it shows Newport's percentage of total industry marketing expenditures, based on Lorillard's FTC reports and Dr. Krugman's testimony, along with Newport's market share from 1981, when you started with Lorillard, until 2002, according to the Maxwell Reports.

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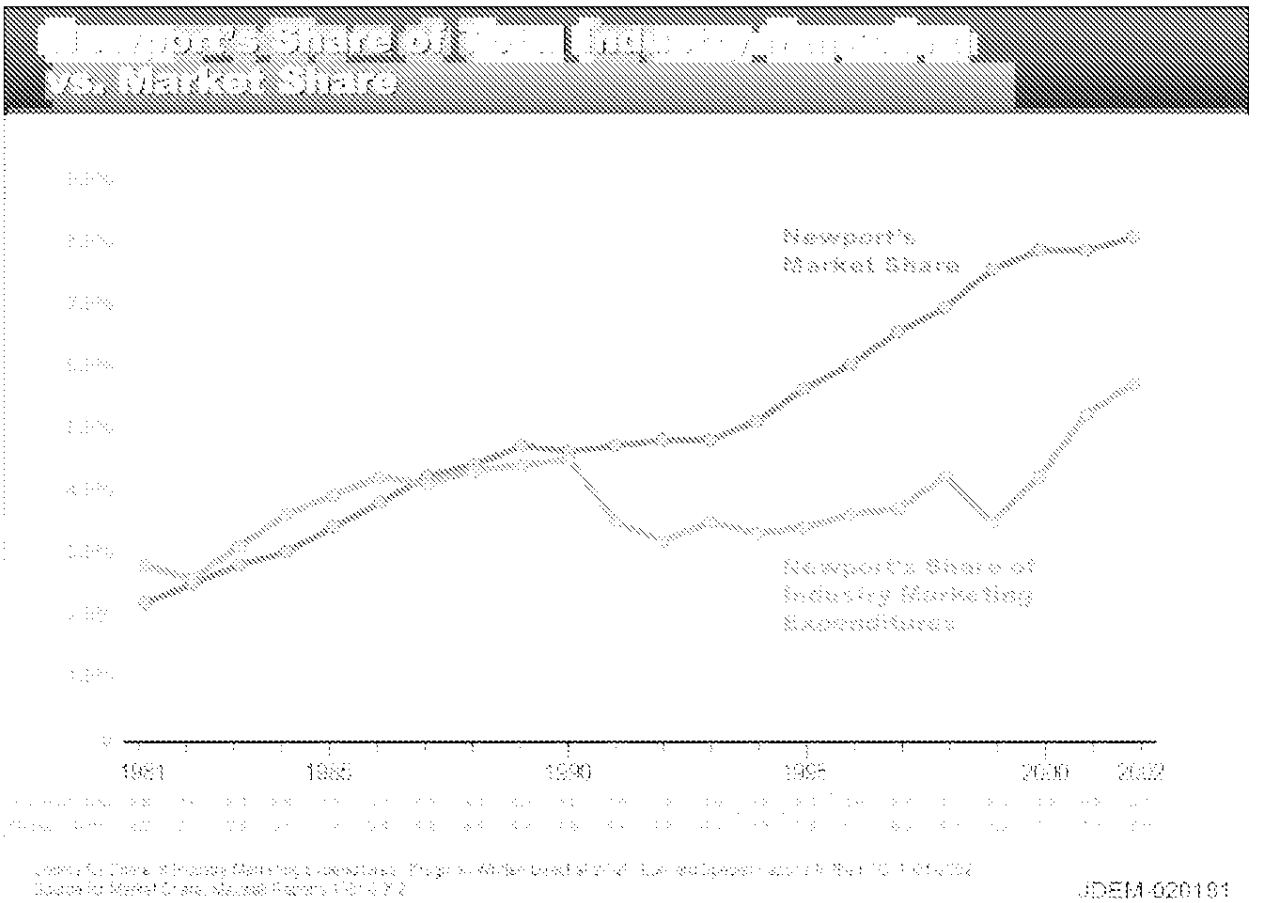

What does this graph indicate to you based on your experience with Lorillard?

A: This graph shows that our share of marketing expenditures roughly followed our market share until 1990. Then, our share of marketing expenditures dropped, and it has been well below our market share ever since.

Q: Mr. Lindsley, the graph shows that your share of industry expenditures increased after 1999 even though it was still below your market share; what caused that jump?

A: That was the period when pricing became so important. The more cigarettes you sell, the more you spend on promotions such as retail price discounts. As the second largest selling brand in the industry, spending on price promotions would be expected to be high compared to other

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brands. But, as you can see, Newport's share of the industry's expenditures is still well below our market share.

Q: Then what explains Newport's success with adult smokers?

A: Newport has the tobacco and menthol taste that most menthol smokers prefer. Promotion and advertising are important, but the single biggest reason for our success is the product itself.

Q: Let's briefly talk about the marketing of Lorillard's other brands. Why can't Lorillard be as successful in marketing those brands as it is with Newport?

A: Lorillard has in Newport a product with a taste to which a significant number of menthol smokers respond. That taste fulfills a consumer want in the marketplace. Lorillard's other brands haven't found a significant number of consumers who respond to the taste of those brands as menthol smokers respond to Newport. As a result, the opportunity to build those brands is limited and not worth the marketing investment. In fact, there have been times in the past when Lorillard did invest more heavily in those brands without any corresponding improvement in their market performance.

I have no further questions, Mr. Lindsley.

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